

AD8-012 Amendment and Clarifications

1. NOTE: All Proposals are due date February 8th 2007, 3:00PM, MST
2. The Arizona Department of Administration is amending the following response that was provided to offerors in AD8-012_Questions and Responses_Amendment2.
37. §2.16.2. Is the Operator responsible for transportation and security to, from, and during off-site work assignments? If yes, is this reimbursable separate of the per diem or shall it be included in the per diem?

RESPONSE #37

1. Yes, the facility Operator is responsible for transportation to and from off-site work assignments.
2. No, this is not reimbursable.

RESPONSE # 37 is amended is follows:

RESPONSE # 37

- 1. Yes, the facility Operator is responsible for transportation to and from off-site work assignments.**
- 2. No, this is not reimbursable separately but shall be included in the per diem rate offered and identified on the price sheet.**

AD8-012 – CLARIFICATIONS

In response to a letter submitted by the Arizona Department of Corrections, attached hereto dated January 30, 2007 the Department of Administration offers the following clarifications:

1. RESPONSES #69 and #73

If any of the offerors are subject to a superior or equivalent Arizona regulatory scheme, the offeror shall describe that scheme and the Department of Administration shall evaluate whether it meets the requirements of the RFP.

2. RESPONSES #70 and #75

Same as response to #69 and #73 above.

3. RESPONSE #74

The Arizona Department of Administration has been appropriated an amount for per diem payments to the contractor. Any unspent funds by the Department of Administration are required to revert to the general fund.

Arizona Department of Corrections



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DORA B. SCHIRO
DIRECTOR

January 30, 2007

Jean Clark
Chief Procurement Officer
Arizona Department of Administration
100 N. 15th Avenue
Phoenix, AZ 85007

Re: RFP #AD8-012, entitled Minimum Security Prison Beds Clarification

Dear Ms. Clark:

The Arizona Department of Corrections requests further clarification from the Arizona Department of Administration (ADOA) regarding recent responses to the questions submitted with reference to RFP #AD8-012, entitled Minimum Security Prison Beds. In some instances, the responses provided by ADOA appeared to conflict with state statutes, thus not giving the guidance the Department is seeking in efforts to comply with the RFP. In other situations, the responses needlessly create cost for the State. The Arizona Department of Corrections respectfully requests further consideration and advice with reference to each of the following inquiries concerning specific sections of the RFP as submitted below in bold.

First, the Department is seeking clarification of ADOA responses #69 and #73, both concerning the same issue: The type of certification required for its correctional officers and command staff.

Response # 69 2.0 Scope of Work, Security Officer Requirement

RFP: 2.2.1.47 – An employee of the Offeror to whom a “Registration Certificate” has been issued by DPS in accordance with A.R.S Title 32, Chapter 26, Article 3, if applicable. Security Officers include Major, Captain, Lieutenant, Sergeant, and all Correctional Officers. The Department is requesting clarification and a review of the denial of exception with reference to this requirement.

ADC Initial question: Pursuant to ARS 41-1822 (B) and ACC Title 13, Article 2, R13-4 201 through 208, Arizona’s Peace Officer Standards Training (POST) Board establishes the requirements for certification of the Arizona Department of Corrections’ correctional officers. Arizona’s POST Board standards meet and exceed the requirements for a “Registration Certificate” for security officers as set forth in A.R.S Title 32, Chapter 26, Article 3. Given these provisions in law we assume the Arizona Department of Administration will grant us an exception to the requirements of 2.2.1.47; kindly confirm.

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ADOA Response #69: *"The Department of Corrections is not granted an exception to this requirement."*

Response # 73 Scope of work

RFP: 2.9.10.3 – Personnel hired for the positions of Major, Captain, Lieutenant, Sergeant and Correctional Officers shall be registered by the Department of Public Safety as Security Guards (officers), in accordance with the requirements of A.R.S. title 32, Chapter 23, Article 3, prior to initiation of services. The Department is requesting clarification and a review of the denial of exception with reference to this requirement.

ADC Initial question: Pursuant to ARS 41-1822 (B) and ACC Title 13, Article 2, R13-4 201 through 208, Arizona's Peace Officer Standards Training (POST) Board establishes the requirements for certification of the department's correctional officers. Arizona's POST Board standards meet and exceed the requirements for a "Registration Certificate" for security officers as set forth in A.R.S Title 32, Chapter 26, Article 3. As such, we assume the Arizona Department of Administration will grant us an exception to the requirements of 2.9.10.3; kindly confirm.

ADOA Response #73: *"The Department of Corrections is not granted an exception to this requirement."*

ADC clarification and exception request regarding ADOA response to #69 and #73:

The response provided by the Arizona Department of Administration denying the request for an exception to the requirement that the Department's Correctional Officers and other security personnel must be certified, under Arizona Revised Statutes Title 32, as Security Guards pursuant to 2.2.1.47 of the RFP is contrary to statute. A.R.S. 32-2303 states that "[T]his chapter [Title 32] does not apply to: An officer or employee...of this state or a political subdivision of this state while the officer or employee is performing official duties." (Emphasis added.) The Department appreciates that ADOA is seeking to implement an equivalent standard for all Offerors. However, the Arizona legislature in enacting the security guard requirements clearly never intended that the Arizona Department of Corrections, as a state agency, be required to comply with those requirements specifically.

The Department is not seeking an exception to avoid complying with the minimum standards required for the certification of security guards pursuant to A.R.S. 32-2622. Rather, the Department is requesting that ADOA recognize and acknowledge that the certification process established by the State for "Correctional Officers" far exceeds the requirements for Security Guard certification and that there is no benefit to the State in requiring that the Department now process its officers through a lesser certification process with the Arizona Department of Public Safety. The following is a certification comparison between security guard certifications issued pursuant to A.R.S. Title 32 and Correctional Officer certifications issued by AZ POST which may be of assistance. Please review the denial of this request for exception and kindly confirm.

Requirements for Certification	Security Guard Certification A.R.S. 32-2622	ADC Correctional Officer A.R.S. 41-1822, R13-4-202, 13-4-203
Minimum Age	18 years	21 years
Citizenship	Same	Same
Criminal History Check 1. Felony Check 2. Misdemeanor Check	Same Check limited to 5 years preceding application. Check expands for armed guard applicant to 5 years for domestic violence offenses or prohibited possessor.	Same Misdemeanor check reviews applicant's entire criminal history. Complies with AZ Post requirements addressing criminal history [charged and uncharged offenses].
Drug Use	Not addressed, unless prior conviction w/in past 5 years.	Lifetime use may not exceed AZ Post Standards
Basic Background Check	Yes	Yes; ADC POST-certified investigators perform intensive background checks on all applicants. AZ POST audits ADC background investigations and hires monthly to ensure compliance.
Drug Testing	Not required	Mandatory ¹
Medical Exam	Not required	Mandatory
Psychological Exam	Not required. ²	Mandatory
Physical Fitness Exam	Not required ³	Mandatory in academy
Valid Drivers License	Not required	Mandatory
Education Requirements	Not required	High school diploma or GED required
Corrections Training	8 hours	400 hours mandatory training including 360 hours AZ POST academy and 40 hours additional on the job training. All CO III, sergeants, lieutenants, and captains advancements require 80 additional hours of training. ⁴
Firearms Initial Training	16 hours training	40 hours of academy training with practical testing requirements ⁵
Firearms Continuing Ed.	8 Hours yearly	8 hours yearly
Oath	Not Required	Mandatory

¹ ADC requires drug testing for the prehire correctional officer, promotional positions and should a situation warrant drug testing.

² A.R.S 32-2622.A.7 "Applicant may not be adjudicated mentally incompetent or found to be a danger to self or others."

³ A.R.S 32-2622 may not have physical impairment which substantially limits one or more of the major life activities of the applicant.

⁴ R13-4-20.C: Academy curriculum provides training in i). Ethics and Professionalism; Inmate Management Legal Issues; Communication Skills; Officer Safety (including firearms); Applied Skills; Security; Custody and Control; Conflict and Crisis Management; Medical Emergencies; and Physical and Mental Health. The cadets are given written, oral and/or practical demonstration examinations and must maintain a specific academic standard in order to become certified.

⁵ R13-4-205.D.4.a In addition to academic instruction, each cadet shall pass a practical exam which includes 50-shot daytime or nighttime qualification course with service handgun – minimum passing score 210 points out of 250. Seven-shot qualification course with service shotgun; and target identification and discrimination course.

Also see R13-4-206 for further firearm training qualifications.

Upon graduation from the Department's Correctional Officers Training Academy (COTA), its correctional officers receive 21 college credit hours from Rio Salado Community College. In addition, eligible graduates also earn G.I. benefits for attending its Academy.

The Department's Correctional Officers Training Academy has also received national recognition for training and curriculum. The International Association of Correctional Training Professionals presented the Arizona Department of Corrections with the Innovative Approaches Award of Excellence for Program Development in 2005 and the Innovative Approaches Award of Excellence for First Aid and Basic Life Support in 1999 in recognition of the excellent curriculum provided to cadet at COTA. The Department's excellence in training does not stop with cadet training; the International Association of Correctional Training Professionals also presented the Department with the Training Systems Award for New Correctional Administrators' Academy in 2002 in recognition of the Department's excellence in training correctional managers. The Arizona Department of Corrections Video Studio has also received thirteen national and international awards for excellence in educational video productions over the past six years.

Second, the Department is seeking clarification of ADOA responses #70 and #75, both concerning the same issue: the requirement that the Offeror be a licensed security agency according to and in compliance with A.R.S. Title 32.

Response #70 2.0 Scope of Work, Licensed Security Agency Requirement

RFP 2.4.1 – The Offeror shall be a licensed security agency. The Department is requesting clarification and a review of the denial of exception with reference to this requirement.

ADC Initial question: The Arizona Department of Corrections has been mandated with the authority and obligation to oversee the implementation, operation and policies of the Arizona State prison system pursuant to A.R.S Title 41. These statutory responsibilities meet and exceed the requirements to become a licensed security agency thus we assume the Arizona Department of Administration will grant us an exception to the requirements of 2.4.1; kindly confirm.

ADOA Response #70: "The Department of Corrections is not granted an exception to this requirement."

Response #75 Scope of Work

RFP 2.9.11.3.1 – If applicable, licensure shall be in accordance with the requirements of A.R.S. Title 32, Chapter 26, Articles 2, 3 and 4 and A.R.S. 32-2611 through 32-2637. The Department is requesting clarification and a review of the denial of exception with reference to this requirement.

ADC Initial question: the Arizona Department of Corrections was created and mandated with the authority and obligation to oversee the implementation, operation and policies of the Arizona State prison system pursuant to A.R.S Title 41. These statutory responsibilities meet and exceed the requirements of A.R.S. Title 32, Chapter 26, Articles 2, 3 and 4 and A.R.S. 32-2611 through 32-2637. As such, the requirements of 2.9.11.3.1

are not applicable to the ADC. We assume the Arizona Department of Administration will grant us an exception to the requirements of 2.9.11.3.1; kindly confirm.

ADOA Response #75: “The Department of Corrections is not granted an exception to this requirement.”

ADC clarification and exception request regarding ADOA response to #70 and #75

By declining to grant the Arizona Department of Corrections an exception to #70 and #75, ADOA is directing that the Department as a state agency comply with statutes that were enacted to apply to private entities. Title 32 of Arizona Revised Statute regulates Professions and Occupations, not other state agencies. It is not applicable. The Department appreciates that ADOA is seeking to implement an equivalent standard for all Offerors. However, the Arizona legislature in enacting the security guard requirements clearly never intended that the Department as a state agency be required to comply with those requirements specifically. While ADOA is attempting to establish a minimum standard for private entities to meet, the Department already meets and exceeds these standards. The Arizona legislature never authorized the Arizona Department of Public Safety to license and to regulate the Arizona Department of Corrections; the Department respectfully submits that ADOA may not require the Department to submit to such licensure and regulations now.

The legislature creates and empowers state agencies. The legislature authorized the establishment of the Arizona Department of Corrections, mandating as “its purpose the objective of encompassing the various institutions, facilities and programs which are now or may become a part of the correctional program of the state...” See A.R.S. 41-1602. The legislature invested in the Department the authority to oversee all functions of the Arizona Department of Corrections. The Department is concerned: the import of the answers by ADOA is that ADOA is performing a legislative function which is beyond its legal authority as a state agency. The Arizona legislature gave the Arizona Department of Corrections authority to bid; the Arizona legislature did not enact legislation which would enable the Department to function as a private agency. The Department respectfully submits it is unnecessary and contrary to law to require compliance with the licensing requirements in A.R.S. Title 32.

Third, the Department is seeking clarification of ADOA response #74 concerning vacant positions and penalties.

Response #74 2.0 Scope of Work

RFP 2.9.10.7 – The facility operator’s failure to fill a position that has remained vacant for longer than forty-five (45) days may constitute an Event of Default. An offset (reducing an invoice) for the costs associated with the position(s)/post(s) shall be imposed by the Department of Corrections in the amount of mean salary and full cost of benefits of the vacant position(s) for each day beyond the 45th day that the position remains vacant. The contractor shall provide the Department of Corrections’ Monitor with a current list of the salary and benefits for each of the contractor’s and subcontractor’s staff positions. This list shall be updated annually or upon any adjustment to any position. The Department is requesting clarification and a review of the denial of exception with reference to this requirement.

ADC Initial question: Unlike private prison providers which receive per diem payments in full absent specific action by the Arizona Department of Corrections when a private prison provider fails to comply with its contractual conditions, the department is required to revert its unspent personnel services funds and other appropriated funds to the General Fund unless otherwise expressly directed by the legislature. As such, the requirements of 2.9.10.7 are not applicable to the ADC. We assume the Arizona Department of Administration will grant us an exception to the requirements of 2.9.10.7; kindly confirm.

ADOA Response #74: "The Department of Corrections is not granted an exception to this requirement."

Arizona Department of Corrections clarification request regarding response #74:

This clarification request also concerns the apparent failure to recognize the distinction between a privately held company and a state agency. Unlike the private prison providers, the Department is required to revert unspent personnel services funds and other appropriated funds to the General Fund unless otherwise expressly directed by the legislature thus unlike the private prison provider the Department does not "profit" by having vacancies. Also unlike private prison providers, the Department may not fill vacancies except by means approved by ADOA and appropriated by the legislature. These provisions already ensure that state funds are used expressly for approved state purposes. As such, the requirements of 2.9.10.7 are not necessary; indeed they may be unnecessarily costly. Withholding a portion of the per diem as an offset when those funds may be expended to cover critical security posts with overtime will result in deficit spending for the Department. The Department is requesting clarification and a review of the denial of exception with reference to this requirement.

In summary, the issues addressed in this request for clarification primarily concern the Department's statutory construction which is markedly different than that of private prison providers. While the Arizona Department of Corrections is seeking to comply with the requirements of the RFP, the Department has clearly delineated powers and limitations established by the Arizona legislature. These powers and limitations enable the Department to deliver excellent correctional services but necessarily as contemplated in the RFP whose construction is based on prior private prison solicitations. The Department respectfully requests that ADOA review its responses and provide additional direction with reference to the questions specified.

Thank you for your timely consideration of these issues.

Sincerely,



John R. Hallahan
Division Director, Support Service

cc: Dora Schriro, Director, ADC
Bill Bell, Director, ADOA